

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO SALES TAX FINANCING
CORPORATION,

Debtor.

PROMESA

Title III

No. 17 BK 3284-LTS

**This Document relates only to
COFINA, and shall be filed in the
lead Case No. 17-BK-3283-LTS,
and in COFINA's Title III Case
No. 17-BK-3284-LTS**

**STIPULATION AND AGREED ORDER, PURSUANT TO ARTICLE 3.2 OF THE
THIRD AMENDED TITLE III PLAN OF ADJUSTMENT OF PUERTO RICO SALES
TAX FINANCING CORPORATION, ESTABLISHING A PROTOCOL FOR THE
REVIEW AND PAYMENT OF POST-EFFECTIVE DATE COFINA FEES**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations.)

This matter having come before the Court by the *Notice of Filing of Stipulation and Agreed Order, Pursuant to Article 3.2 of the Third Amended Title III Plan of Adjustment of Puerto Rico Sales Tax Financing Corporation, Establishing a Protocol for the Review and Payment of Post-Effective Date COFINA Fees* [Case No. 17-3284, Dkt. No. 679; Case No. 17-3283, Dkt. No. 8751] filed by (i) the Financial Oversight and Management Board for Puerto Rico (the “**Oversight Board**”), as COFINA’s representative pursuant to Section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“**PROMESA**”), (ii) the Puerto Rico Fiscal Agency and Financial Advisory Authority (“**AAFAF**”) as fiscal agent and financial advisor of Reorganized COFINA, and (iii) the Fee Examiner, for the entry of this Stipulation and Agreed Order (the “**Order**”) for the post-effective date review and payment of post-effective date COFINA fees and good cause having been shown, the Court hereby approves this Order.

RECITALS

1. On February 5, 2019, the Court approved the *Third Amended Title III Plan of Adjustment of Puerto Rico Sales Tax Financing Corporation* [Case No. 17-3284, Dkt. No. 436] (the “**COFINA Plan**”).
2. The Effective Date occurred on February 12, 2019 (the “**Effective Date**”) [Dkt No. 587].
3. The COFINA Plan provides at §30.13 that: “From and after the Effective Date, Reorganized COFINA shall, in the ordinary course of business and without the necessity for any approval by the Title III Court, retain professionals and pay the reasonable professional fees and expenses incurred by Reorganized COFINA related to implementation and consummation of the Plan without further approval from the Title III Court.”
4. The allocation of funds provided for in §2.1(a) of the COFINA Plan makes clear

that Reorganized COFINA has a fixed, limited fund for fees and expenses incurred by its professionals after the Effective Date through the maturity of its bonds.

5. Pursuant to §15.2 of the COFINA Plan, “all expenses, including Allowed Administrative Expense Claims and Allowed Professional Claims, incurred by the Commonwealth or COFINA, as the case may be, in connection with the development, negotiation, confirmation and consummation of the Plan and the compromise and settlement of the Commonwealth-COFINA Dispute shall be paid to the extent available from the funds distributable to the Commonwealth in accordance with the provisions of Sections 2.1 and 15.1 hereof and otherwise by the Commonwealth.”

6. The Puerto Rico Department of Treasury (“**Hacienda**”) has requested that AAFAF and the Fee Examiner obtain Court approval for an agreed protocol for the review and payment of post-Effective Date fees related to the Title III case of COFINA.

NOW, THEREFORE, the parties agree that all requests to Reorganized COFINA and/or Hacienda for the payment of post-Effective Date professional fees or expenses related to the Title III case of COFINA shall be subject to the following agreed review protocol:

AGREED PROTOCOL FOR THE REVIEW AND PAYMENT OF POST-EFFECTIVE DATE FEES RELATED TO THE TITLE III CASE OF COFINA

- A. On or before the 15th day of each calendar month, or as soon as practicable thereafter, each Professional may serve a statement of requested compensation for post-Effective Date services rendered and reimbursement of post-Effective Date expenses incurred during any preceding month or months, supported by electronic fee and expense data in a format suitable to the Fee Examiner (a “**Post-Effective Date Monthly Fee Statement**”), by e-mail, on each of the following entities (collectively, the “**Notice Parties**”):
 - i. attorneys for the Puerto Rico Fiscal Agency and Financial Advisory Authority, O’Melveny & Myers LLP, Times Square Tower, 7 Times Square, New York, NY 10036, Attn: John J. Rapisardi, Esq., Suzanne Uhland, Esq., and Diana M. Perez, Esq.;

- ii. attorneys for the Puerto Rico Fiscal Agency and Financial Advisory Authority, Marini Pietrantoni Muñiz LLC, MCS Plaza, Suite 500, 255 Ponce de León Ave, San Juan, PR 00917, Attn: Luis C. Marini-Biaggi, Esq. (lmarini@mpmlawpr.com), Carolina Velaz-Rivero Esq. (cvelaz@mpmlawpr.com) and Valerie Blay Soler, Esq. (vblay@mpmlawpr.com);
 - iii. attorneys for the Fee Examiner, EDGE Legal Strategies, PSC, 252 Ponce de León Avenue, Citibank Tower, 12th Floor, San Juan, PR 00918, Attn: Eyck O. Lugo (elugo@edgelegalpr.com); and
 - iv. attorneys for the Fee Examiner, Godfrey & Kahn, S.C., One East Main Street, Suite 500, Madison, WI 53703, Attn: Katherine Stadler (kstadler@gklaw.com), Andrew Dalton (adalton@gklaw.com), Kathleen Boucher (kboucher@gklaw.com) and Leah Viola (lviola@gklaw.com).
- B. The Fee Examiner and counsel shall conduct a review of each Post-Effective Date Monthly Fee Statement that:
- i. Verifies that all fees and expenses requested are supported by documentation and electronic data in a format suitable to the Fee Examiner;
 - ii. Identifies any mathematical errors or duplicate time or expense entries in the fees requested; and
 - iii. Confirms that all fees and expenses requested comply with all applicable guidelines and caps, including the *Memorandum Regarding Fee Review – Timeline and Process, dated November 10, 2017* (the “**Fee Examiner Guidelines**”), United States Trustees’ *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. Sec. 330*, 28 CFR Part 58, Appendix A and Appendix B (the “**UST Guidelines**”) and any guidelines promulgated by AAFAF (the “**AAFAF Guidelines**”), as applicable.
- C. Any Post-Effective Date Monthly Fee Statements or other invoices on account of post-Effective Date services rendered and reimbursement of post-Effective Date expenses incurred submitted to AAFAF by Professionals and paid partially or in full as of the date hereof shall not be subject to this Order, including, without limitation, not subject to the review of the Fee Examiner, and shall not be subject to any disgorgement. Hacienda is authorized and directed to pay the unpaid balance of Post-Effective Date Monthly Fee Statements or other invoices submitted to AAFAF by Professionals and paid partially as of the date hereof no later than October 18, 2019.

- D. Each Notice Party may file and serve upon the professional that submitted the Post-Effective Date Monthly Fee Statement and the other Notice Parties, so as to be received on or before 4:00 p.m. (Atlantic Standard Time) on the tenth day (or the next business day if such day is not a business day) following service of the Post-Effective Date Monthly Fee Statement (the “**Objection Deadline**”) any objection or reservation of rights to the requested fees and expenses; *provided, however*, that the Objection Deadline does not apply to the Fee Examiner. Upon expiration of the Objection Deadline, the professionals that submitted a Post-Effective Date Monthly Fee Statement shall provide a statement (the “**Post-Effective Date Monthly Fee Objection Statement**”) to Hacienda (Attn: Maritza Landrau, Maritza.Landrau@hacienda.pr.gov) and AAFAF (Attn: Lalissee Marty Guillen, Lalissee.Guillen@aafaf.pr.gov), providing the calculation of the fees and reimbursement requested and any amounts that were objected to. Upon the receipt of the Post-Effective Date Monthly Fee Objection Statement, Hacienda shall be authorized and directed to pay 100% of the requested fees and expenses, subject to any Proposed Reduction (as defined below).
- E. If any Notice Party wishes to object to a professional’s Post-Effective Date Monthly Fee Statement, it must serve a written objection (an “**Objection**”) on the professional that submitted the Post-Effective Date Monthly Fee Statement and each of the other Notice Parties, so it is received by each of these parties on or before the Objection Deadline. Thereafter, the objecting party and the affected professional may attempt to resolve the Objection on a consensual basis before or after the Fee Examiner’s determination of the disputed fees and expenses. If the parties are unable to reach a resolution of the Objection, the objecting party may file the Objection with the Court no later than seven (7) days after the Fee Examiner Notice is issued to the affected Professional with respect to the affected Post-Effective Date Monthly Fee Statement, and the affected Professional may either (i) file a request with the Court for payment of the fees and expenses subject to the Objection (the “**Disputed Amount**”) or (ii) choose to forego payment of the Disputed Amount.
- F. The Fee Examiner shall issue, within twenty-one (21) days of service of a Post-Effective Date Monthly Fee Objection Statement and all electronic billing and expense records in a format suitable to the Fee Examiner, or as soon as practicable thereafter, a notice to the Professional and AAFAF outlining any identified discrepancies and associated recommended reductions (the “**Proposed Reduction**”) following discussions with the affected Professional (the “**Fee Examiner Notice**”). If the affected Professional disagrees with any Proposed Reduction, it may file a request with the Court for payment of the fees and expenses within 14 days of receipt of the Proposed Reduction, which period may be extended with the written consent of the Fee Examiner (the “**Filing Deadline**”). If no such request is filed by the affected Professional on or before the Filing

Deadline, or the Court denies such request, the Proposed Reduction shall be deducted from the payment on the next Post-Effective Date Monthly Fee Statement submitted by the affected Professional.

- G. AAFAF and Hacienda shall be authorized to credit future payment of fees or expenses of Professionals subject to an uncontested Proposed Reduction by the Fee Examiner.
- H. For all Post-Effective Date Monthly Fee Statements submitted by Professionals through September 30, 2019 that remain unpaid and are subject to this Order, the Objection Deadline shall be October 10, 2019, provided that all unpaid Post-Effective Date Monthly Fee Statements be submitted to the Notice Parties by September 30, 2019. Upon the expiration of the Objection Deadline, Hacienda shall be authorized and directed to pay the unpaid balance of all such Post-Effective Date Monthly Fee Statements no later than October 18, 2019.
- I. The Fee Examiner and his professionals shall be entitled to reasonable compensation for the services outlined herein subject to the compensation procedures set forth in the *First Amended Order Pursuant to PROMESA Sections 316 and 317 and Bankruptcy Code Section 105(A) Appointing a Fee Examiner and Related Relief* [Dkt. No. 3324], and the *Order Authorizing the Employment of Godfrey & Kahn, S.C. as Counsel to the Fee Examiner* [Dkt. No. 1993].
 - i. The Fee Examiner shall establish separate matter numbers for post-Effective Date fee review on a professional-by-professional basis;
 - ii. Notwithstanding the terms of the First Amended Fee Examiner Order and/or Third Amended Interim Compensation Procedures, no party other than AAFAF shall have standing to object to the payment of the Fee Examiner's charges for work on the review of post-Effective Date matters.
- J. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

[Remainder of Page Intentionally Left Blank]

This Order resolves Docket Entry No. 679 in Case No. 17-BK-3284-LTS and Docket Entry No. 8751 in Case No. 17-BK-3284.

STIPULATED AND AGREED TO BY:

PROSKAUER ROSE LLP

/s/ Brian S. Rosen

Martin J. Bienenstock (*pro hac vice*)
Brian S. Rosen (*pro hac vice*)
Eleven Times Square
New York, NY 10036
Tel: (212) 969-3000
Fax: (212) 969-2900

*Attorneys for the Financial Oversight and
Management Board, as representative for
COFINA*

GODFREY & KAHN, S.C.

/s/ Katherine Stadler

Katherine Stadler (*pro hac vice*)
One East Main Street, Suite 500
Madison, WI 53703
Tel.: (608) 257-3911
Fax.: (608) 257-0609

Counsel for the Fee Examiner

O'MELVENY & MYERS LLP

/s/ Suzanne Uhland

John J. Rapisardi (*pro hac vice*)
Suzanne Uhland (*pro hac vice*)
Peter Friedman (*pro hac vice*)
Times Square Tower
Seven Times Square
New York, NY 10036
Tel.: (212) 326-2000
Fax: (212) 326-2061

*Attorneys for the Puerto Rico Fiscal
Agency and Financial Advisor Authority*

SO ORDERED.

Dated: September 25, 2019

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
United States District Judge